LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

MONTANA LEGISLATIVE HISTORY

Chapter 217 2005

Bill H _____ S 375 Original bill & history ___C ✓

H. Committee on Bus. & Labor		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
3/15 ✓	___C	2/10	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/21 ✓	___C	2/14 ✓	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

2005 Session

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC1331 Current Bill Text
Bill Type - Number: SB 375
Short Title: Revise venue of out-of-state railroad defendants
Primary Sponsor: Mike Wheat

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/14/2005			
(S) Signed by Governor	04/13/2005			
(S) Transmitted to Governor	04/04/2005			
(H) Signed by Speaker	04/04/2005			
(S) Signed by President	04/02/2005			
(C) Sent to Printing	04/02/2005			
(S) Returned from Enrolling	04/02/2005			
(S) Sent to Enrolling	04/01/2005			
(H) Returned to Senate	03/31/2005			
(H) 3rd Reading Concurred	03/31/2005	58	42	
(H) Scheduled for 3rd Reading	03/31/2005			
(C) Sent to Printing	03/30/2005			
(H) 2nd Reading Concurred	03/30/2005	59	41	
(H) 2nd Reading Motion to Amend Failed	03/30/2005	46	54	
(H) 2nd Reading Motion to Amend Failed	03/30/2005	46	54	
(H) Scheduled for 2nd Reading	03/30/2005			
(H) Committee Report--Bill Concurred	03/21/2005			(H) Business and Labor
(H) Committee Executive Action--Bill	03/21/2005	11	7	(H) Business and

Concurred				Labor
(H) Hearing	03/15/2005			(H) Business and Labor
(H) Referred to Committee	03/08/2005			(H) Business and Labor
(H) First Reading	03/08/2005			
(S) Transmitted to House	02/18/2005			
(S) 3rd Reading Passed	02/18/2005	30	20	
(S) Scheduled for 3rd Reading	02/18/2005			
(S) 2nd Reading Passed	02/17/2005	28	21	
(S) Scheduled for 2nd Reading	02/17/2005			
(S) Scheduled for 2nd Reading	02/16/2005			
(S) Committee Report--Bill Passed	02/14/2005			(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/14/2005	8	4	(S) Judiciary
(S) Hearing	02/10/2005			(S) Judiciary
(C) Introduced Bill Text Available Electronically	02/04/2005			
(S) Referred to Committee	02/04/2005			(S) Judiciary
(S) First Reading	02/04/2005			
(S) Introduced	02/04/2005			
(C) Draft Delivered to Requester	02/02/2005			
(C) Draft Ready for Delivery	01/31/2005			
(C) Draft in Assembly/Executive Director Review	01/31/2005			
(C) Draft in Final Drafter Review	01/31/2005			
(C) Bill Draft Text Available Electronically	01/28/2005			
(C) Draft in Input/Proofing	01/28/2005			
(C) Draft to Drafter - Edit Review [SAB]	01/28/2005			
(C) Draft in Edit	01/28/2005			
(C) Draft in Legal Review	01/28/2005			
(C) Draft to Requester for Review	01/26/2005			
(C) Draft Back for Requester Changes	01/26/2005			
(C) Draft to Requester for Review	01/15/2005			
(C) Draft Request Received	11/30/2004			

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Wheat	Mike	
Drafter	Lane	Valencia	
Primary Sponsor	Wheat	Mike	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Civil Procedure		Simple	CIV
Corporations/Partnerships/Associations		Simple	CORP

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 217
DEADLINE
Category: General Bills
Transmittal Date: 03/01/2005
Return (with 2nd house amendments) Date: 04/06/2005

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	13-APR-05	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

12/28/2005 09:22 AM Mountain Time
| Look Up Bill Information | Committee and Hearing Information |

House Agenda(s)	House Journals	Daily House Floor Actions
Senate Agenda(s)	Senate Journals	Daily Senate Floor Actions
Legislator Information	Reports

| *Legislative Branch Home Page* | *Current Session Home Page* | *Session Information Page* |
Help | System Requirements to run LAWS | *Webmaster@theBranch*

2005 Montana Legislature

About Bill -- Links

SENATE BILL NO. 375
INTRODUCED BY WHEAT

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~If~~ Except as provided in subsection (4), if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~If~~ Except as provided in subsection (4), if the defendant is a resident of a state other than Montana, the

proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to causes of action occurring on or after [the effective date of this act].

- END -

Latest Version of SB 375 *(SB0375.ENR)*

Processed for the Web on April 2, 2005 (11:30am)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2005 Legislature | Leg. Branch Home

This bill in WP 5.1 | All versions of all bills (WP 5.1 format)

Authorized print version w/line numbers (PDF format)

[NEW SEARCH]

Prepared by Montana Legislative Services

(406) 444-3064

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRENT R. CROMLEY**, on February 10, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: Sen. Gerald Pease (D)

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary
Britt Nelson, Transcriber

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 375, 2/7/2005; SB 374, 2/7/2005; SB 378, 2/7/2005

Executive Action:

VICE CHAIR BRENT CROMLEY, SD 25, BILLINGS explained that the order of the bills would be SB 375, SB 378, and SB 374.

HEARING ON SB 375

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 375,** Revise venue of out-of-state railroad defendants.

SEN. WHEAT informed the Committee that SB 375 would allow Federal Employees Liability Act (FELA) defendants in Montana to bring a claim against the railroad anywhere in the state. He explained and then read an excerpt from the Montana Supreme Court case Rule versus Burlington Northern. He reported that the Supreme Court's decision in the Rule case followed the legislative change that was made in 1995 and upheld the venue change in the Rule case. However, he expressed that there is an underlying liberal construction that is in favor of the injured worker in most of the FELA cases. He claimed that his bill attempted to take the venue in FELA cases to the way it was before the legislature's changes in 1995. He thought, as a legislative body, the Committee should be making a policy statement that they were going to give as many options as they could to the injured FELA worker. He reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}

Proponents' Testimony:

REP. BOB BERGREN, HD 33, HAVRE, spoke on behalf of the railroad workers whom he represented. He believed that HB 375 would create a fairness issue for the workers and for the companies involved. He felt that a neutral venue would be beneficial to both sides.

{Tape: 1; Side: A; Approx. Time Counter: 8 - 9.3}

Zander Blewett, from Great Falls, expressed that the present venue statute is fair for virtually every claim except when it is applied to FELA claimants. The reason he gave for this was that FELA claimants are forced to sue. As a result, the FELA worker must prove negligence on the part of the railroad. He indicated that, if workers are forced to bring a case only in the area at which they were hurt or the area in which they live, they are left without many choices. He explained that, because of this, there have been very few cases brought against the railroad in Havre and Glendive. Therefore, the present venue law allows the

railroad to decide where they are going to be sued. He attached a copy of the federal law to the handout which he provided to the Committee. He indicated that there was no equal protection problem with this bill because of the help of the Supreme Court. He pointed out that before 1995 the railroad could be sued in any county regardless of where they were doing business. He clarified that the proponents of the bill were not seeking to do this just to allow the railroads to be sued in any county in which they do business.

EXHIBIT(jus33a01)

{Tape: 1; Side: A; Approx. Time Counter: 9.3 - 15.1}

Fran Marceau, State Director for the United Transportation Union, discussed the legislation which led to the railroad companies succeeding in limiting the areas where railroad workers could file lawsuits. He asserted that SB 375 allowed injured Montana railroad workers the right to bring action under FELA in any county where the railroad does business. This levels the playing field. He urged the Committee to support SB 375.

{Tape: 1; Side: A; Approx. Time Counter: 15.1 - 16}

Craig Gilchrist, Chairman of the Montana State Legislative Board for the Brotherhood of Locomotive Engineers and Trainmen, stressed that railroad workers were not asking for any more rights than they had before. They were just trying to get their rights restored. He asked the Committee to support SB 375 because it was a fairness issue.

{Tape: 1; Side: A; Approx. Time Counter: 16 - 17}

Erik Thuesan, a Lawyer from Helena, found railroad workers to be very courageous individuals and was glad he could represent them. He provided a handout describing how FELA fit into the current legislation. He discussed a case he was working on for a railroad worker in Havre. He described the built-in conflict of interest which the jury members in Havre would have. He also described the issues surrounding having a trial out of Billings, which is the other option for a FELA case. He pointed out that the way in which the venue is currently set up allows the railroad to move the location of the trial around depending on where they put their agent for service of process. He reiterated that FELA was created to give the worker a level playing field, giving them the opportunity to choose the place of trial wherever the railroad is doing business.

EXHIBIT(jus33a02)

{Tape: 1; Side: A; Approx. Time Counter: 17 - 22.4}

Al Smith, Montana Trial Lawyers Association, remarked that the bill would not violate equal protection. He commented that the Committee had a rational basis to support the bill because it is allowed by the federal act, they have a constitutional duty under Article 13, Section 1, to protect Montana citizens from corporations and the Montana Supreme Court has said that it is within the power of the legislature to set venue statutes. He also explained that it did not violate Article 2, Section 31, which is the prohibition against granting special immunities and privileges. He explained that the bill would not grant immunity to anyone and would not grant special privilege but it would give injured railroad workers a choice.

{Tape: 1; Side: A; Approx. Time Counter: 22.4 - 24}

Don Judge, Representing Teamsters Local 190, stood in support of SB 375. He agreed with Mr. Smith's testimony completely. He believed that the change in venue was completely an issue of political power. The Teamsters Union was hoping that the political balance had changed and the balance would return to a fair level. He mentioned that the bill only allowed residents of Montana to file cases in any county where the railroad does business.

{Tape: 1; Side: A; Approx. Time Counter: 24 - 26.6}

Darrell Holzer, Representing the Montana State American Federation of Labor - Confederation of Industrial Organizations (AFL-CIO), spoke in strong support for SB 375. He restated that it was truly a fairness issue and he hoped that the level of fairness was restored. He requested that the Committee provide a do pass recommendation for the bill.

{Tape: 1; Side: A; Approx. Time Counter: 26.6 - 27.2}

Opponents' Testimony:

Randy Cox, Lawyer Representing Montana Rail Link, expressed that Montana Rail Link was a Montana company that employs many people and puts millions of dollars into the economy. He claimed that Montana Rail Link would be the only Montana company that would not be afforded the protection of the venue laws which every other Montana company has. He asserted that SB 375 treated a railroad differently than any other company in the United States. He felt that the bill would allow a worker to sue in any county where they felt they would receive the largest settlement. He professed that the venues chosen by the 1995 law had been applied

fairly and evenly to all cases over the past ten years. He referenced the Rule case and provided a copy of an opinion on the case. He indicated that the Supreme Court's ruling which had occurred January 25, 2005, rejected all of the defenses put forth by Mr. Rule. He stressed that there was no special right of a FELA claimant. He commented that if the case was not having a fair trial in certain counties there were provisions in the law which would move the venue to other locations. He also indicated that FELA claimants could go to federal court. What the law requires is to give FELA claimants full access afforded to all other plaintiffs. In his opinion the Montana Supreme Court ruled that the current law did exactly that. He discussed the effect which SB 375 would have on Montana Rail Link. Fundamentally, he saw nothing fair about elevating a particular type of lawsuit and treating it differently from every other court lawsuit in Montana. He saw no justification to change the law just for FELA claimants.

EXHIBIT(jus33a03)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 13.8}

Paul Babb, Chief Executive of Butte-Silver Bow, was opposed to the bill because of the economic development impacts. He remarked that transportation and railroad service in Butte-Silver Bow are key components of their economic development infrastructure. He stressed the importance of Union Pacific to Butte and the Port of Montana. His concern was to make sure that the railroad service would continue in Butte and hopefully expand. He opposed SB 375 because he saw it as a disadvantage for keeping the railroad in Butte.

{Tape: 1; Side: B; Approx. Time Counter: 13.8 - 14.9}

George Paul, General Manager for the Port of Montana, rose in opposition to SB 375 because of the economic benefit to Butte and to Montana. He passed out a pamphlet on the Port of Montana. He opposed this legislation because it limited the ability of the Port of Montana to serve its customers and hurt the economic development of Montana.

{Tape: 1; Side: B; Approx. Time Counter: 14.9 - 17.6}

Leo Berry, Attorney from Helena Representing Burlington Northern and Santa Fe (BNSF) Railroad Company, discussed the law prior to 1997 and the facts which precipitated the change in law. He addressed the options, and effects of those options, FELA complainants have for choosing a location to have their case heard. He reiterated that the Montana Supreme Court unanimously

approved the legislation passed in 1997. He explained that Burlington Northern moved their resident agent to Billings because they had reorganized their operations and moved their corporate headquarters for BNSF to Billings. He quoted the Rules case ruling.

EXHIBIT(jus33a04)

{Tape: 1; Side: B; Approx. Time Counter: 17.6 - 24.6}

William Penn, Economic Development Director of Butte-Silver Bow, opined that one of the most important factors of attracting manufacturing is transportation. He felt that Butte-Silver Bow needs the services and the ability the railroads provide. They believe that they have an advantage to create economic development because of the transportation provided by the railroads.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.8}

SEN. BILL TASH, SD 36, DILLON, talked about the Union Pacific Railroad. He mentioned that the Barrett Minerals Company was very dependent on the Union Pacific Railroad. He agreed that the bill was about a fairness issue but not in the way the proponents expressed.

{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 4.2}

Ed Bartlett, Attorney from Helena Representing Union Pacific, opposed SB 375. He added that the Committee should look at the existing statute 25-2-122, Parts 1-3. He provided a written version of his testimony. He asserted that the Rule case was important because of the timing of the case and the fact that it rejected the same arguments made by Mr. Blewett. He noted that the legislature could decide to do things in addition to FELA but it cannot do less. He referred to the State of the State Address made by Governor Schweitzer. He submitted a letter from the Butte Local Development Corporation in opposition to SB 375.

EXHIBIT(jus33a05)
EXHIBIT(jus33a06)

{Tape: 2; Side: A; Approx. Time Counter: 4.2 - 7.9}

John Youngberg, Representing the Montana Farm Bureau, briefly addressed the Committee. He noted that it cost more money to ship grain from Montana to the coast than it would to ship grain from the Dakotas. He claimed that this had more to do with the cost of doing business in Montana than with the distance. He

concluded that venue shopping caused higher settlements against the railroad which in turn caused a higher cost of doing business which then translated into higher rates.

{Tape: 2; Side: A; Approx. Time Counter: 7.9 - 8.9}

Richard Owen, Representing the Montana Grain Growers Association, rose in opposition to the bill. He saw the bill increasing the operating costs of the railroad which would be passed directly onto the farmers. He informed the Committee that the farmers already spend in excess of $100 million per year shipping grain.

{Tape: 2; Side: A; Approx. Time Counter: 8.9 - 9.9}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JEFF MANGAN, SD 12, GREAT FALLS, explored the economic development side of the bill. He had the distinct impression from the people in Butte that, if this bill passed, Union Pacific would leave. He asked Mr. Bartlett if that was the case.

Mr. Bartlett replied that he could not tell him that it was going to end that way for sure. But, the reason that he indicated to the Committee that Union Pacific only had 125 miles in Montana was because Union Pacific would weigh the cost and the risks of doing business in Montana and he felt that this bill might influence their feelings.

SEN. MANGAN followed up by asking if he could assume that miles were added since 1995.

Mr. Bartlett responded that there had not been any new miles since 1995.

{Tape: 2; Side: A; Approx. Time Counter: 9.9 - 11.9}

SEN. MANGAN was under the impression that one of the reasons for the high transportation costs was that there was only one way to transport grains. He wanted to know if the farmers' transportation costs had decreased since 1995 or increased.

Mr. Owen answered that he did not have the exact figures on cost increase but he did know that the cost per mile had increased because of other circumstances.

{Tape: 2; Side: A; Approx. Time Counter: 11.5 - 12.7}

SEN. MANGAN addressed Mr. Berry. He asked if he could assume that the costs of the railroads have decreased since 1995.

Mr. Berry did not have those kinds of figures but agreed that there were other cost factors that went into running a railroad.

SEN. MANGAN wondered if there were any cost savings from the changes in venues since the opponents had been claiming that there would be increases if the venues were opened up. He asked if any of the savings were passed on to the grain growers.

Mr. Berry did not have these figures either.

{Tape: 2; Side: A; Approx. Time Counter: 12.7 - 13.8}

SEN. MANGAN was curious why dire comments were being made about economic development. He asked if Butte had seen any increased business from Union Pacific or savings passed on because of the venue change from 1995.

Mr. Babb could not speak to the question. He claimed that he would not be standing before the Committee unless he had talked with people who felt that what was happening currently was fair. He wanted to make sure that they maintain what they have in Butte-Silver Bow and transportation is key to do this. He noted that business had increased with railroad service since the Port of Montana opened.

SEN. MANGAN followed up by asking if Mr. Babb had been told by the industry that business would decrease or that they would no longer be doing business in Butte if SB 375 passed.

Mr. Babb remarked that he had not heard that they would no longer be doing business, but from a strong economic development and business standpoint he did not want to offer any disincentives.

{Tape: 2; Side: A; Approx. Time Counter: 13.8 - 16.1}

SEN. JON ELLINGSON, SD 49, MISSOULA, mentioned that Mr. Cox had passed out the recent Supreme Court decision in Rule versus Burlington Northern. He asked Mr. Blewett to comment on the decision as it related to his testimony on SB 375.

Mr. Blewett explained that the Rule decision said nothing other than the fact that the venue, as it is, is acceptable. The decision allowed the legislature to set the policy. The point he saw to this is that, because the Court said that the legislature set the venue like it did, they would follow it in FELA cases.

However, they also said that it was totally up to the legislature to make the decision. The major difference is that FELA workers would not have to sue their employer in their hometowns.

{Tape: 2; Side: A; Approx. Time Counter: 16.1 - 18.5}

SEN. ELLINGSON summarized Mr. Blewett by saying that it was back in the legislature's lap to evaluate the various competing interests and make the right public policy decision affecting the railroad workers.

{Tape: 2; Side: A; Approx. Time Counter: 18.5 - 19}

SEN. DANIEL MCGEE, SD 29, LAUREL said that Mr. Judge had indicated that the reason the law was changed in 1995 and again in 1997 was because of a shift in political power.

Mr. Judge affirmed this inference.

SEN. MCGEE followed up by asking if Mr. Judge would agree that SB 375 was before the Committee for the same reason.

Mr. Judge felt that the opportunity to change the law back to a balance of fairness was related in part to the fact that there was a chance that this legislature may adopt the change.

{Tape: 2; Side: A; Approx. Time Counter: 19 - 19.9}

SEN. JESSE LASLOVICH, SD 43, ANACONDA, asked **SEN. WHEAT** what his intent was with the language on Line 28 which referred to where the railroad does business. He wanted to know if it meant where the railroad has tracks or where they spend money.

SEN. WHEAT did not know if there was federal case law. His intent was that where the railroad does business is where they have tracks on the ground and workers on the tracks.

{Tape: 2; Side: A; Approx. Time Counter: 19.9 - 21.3}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, wondered if a judgment would vary for an injured worker if they had a jury trial or a bench trial.

Mr. Blewett explained that the trials were virtually always jury trials because the plaintiff either demands it or the defense does. Neither party would agree to have a bench trial.

SEN. O'NEIL followed up by saying that he assumed it would not make much of a difference who the judge is.

Mr. Blewett felt that it made very little difference who the judge was because the FELA law is very clear cut and there isn't much room for the judge to effect the case.

{Tape: 2; Side: A; Approx. Time Counter: 21.3 - 23.1}

SEN. O'NEIL interpreted this to mean that the fact that Judge Warner was a judge in Havre and also signed the Rule decision would not have any consequences.

Mr. Blewett commented that the fact that Judge Warner was in Havre had nothing to do with the decision. He asserted the decision would be decided by jurors who live in Havre and are dependent on the railroad. Therefore, few cases are heard there for fear of an unfair trial.

{Tape: 2; Side: A; Approx. Time Counter: 23.1 - 23.8}

VICE CHAIR CROMLEY was concerned that the proponents of the bill had made an argument that a FELA claimant could get a less than adequate award in the hometown of the railroad. He noted that they had heard that, if the claimant gets an adequate reward, it would be bad for the economy but had not heard any evidence that they had been getting more than they deserve in other county venues.

Mr. Cox responded that it was very difficult to say if someone received more than they deserved or less than they deserved when a jury listens to all of the evidence and makes the decision. His point was that there were more choices available where to file the FELA case for an injured worker than there are for other individual residents of Montana suing in, or out-of-state companies.

{Tape: 2; Side: A; Approx. Time Counter: 23.8 - 25.9}

SEN. GARY PERRY, SD 35, MANHATTAN, cited a comment made by Mr. Smith which he had found disconcerting: "If you support corporations, vote no, if you support workers, vote yes." This confused him because he thought that their duty on the Committee was to support fairness and justice impartially. He asked for clarification.

Mr. Smith replied that when he had said that he meant it in the context that this bill was fair to workers so, if the Committee wanted to support workers they should vote for it. However, the current law is unfair to workers so, if the Committee wanted to

continue to support the corporate world, they should vote against the bill.

{Tape: 2; Side: A; Approx. Time Counter: 25.9 - 27.4}

SEN. PERRY referred to the testimony by Mr. Blewett. He quoted from the written version of the testimony which said that it would be unfair for a railroad worker to bring an action in Havre. He wanted to know if this meant that it would be difficult to receive an impartial trial in Havre regarding this type of case.

SEN. WHEAT affirmed that it would be. He explained that the companies for which Mr. Babb, Mr. Paul, and Mr. Penn were there testifying on behalf of, would have nothing change for them. The reason he presented, for them being at the hearing, was that they were feeling the pressure from the corporation who told them that it would be bad for business. He believed that there was pressure in company towns so that injured workers do not receive a level playing field.

{Tape: 2; Side: A; Approx. Time Counter: 27.4 - 29.7}

SEN. PERRY cited Section 201 on change of venues, which allows for an impartial trial. He asked **SEN. WHEAT** if this law did not apply to railroad workers.

SEN. WHEAT could not imagine going in front of a judge in Havre, who was elected by the people of Havre, and have him make the decision that an individual would not get a fair trial in Havre. He could not imagine a judge granting a change of trial in that case. The only time he could think of that section of the law being used was in criminal cases where there has been a horrible crime and the defense lawyers in the community did not believe that the criminal defendant could receive a fair trial.

{Tape: 2; Side: A; Approx. Time Counter: 29.7 - 31.4}

SEN. MCGEE asked that Mr. Halligan give an overview of his experience in this area since he had been a senator, a lawyer, and currently works for the railroad.

Mr. Halligan thought that with the issuance of the Supreme Court opinion which dealt with the issues related to the fairness, balance, and legality, and what the legislature did in 1997, he would have to concur with the decisions of both the Supreme Court and the legislature.

{Tape: 2; Side: A; Approx. Time Counter: 31.4 - 33.2}

Closing by Sponsor:

SEN. WHEAT did not bring this bill to the Committee because there was a shift in political power. He did not view this bill as a political power moved but as a bill that was designed to do the right thing for injured workers. He reminded the Committee that injured railroad workers did not have the benefits of workers compensation, they have to bring their claims against the company. He understood that the Montana Supreme Court upheld the changes to the venue statute in 1995 and 1997. He was not going against this decision. What he was doing was asking that the Committee reflect back and reconsider the actions taken in 1995 and 1997 and change the statute back in these railroad cases because it was the right thing to do for injured workers. He referred to Mr. Cox's testimony about treating railroad companies differently. He asserted that it was federal law that they be treated differently because there was no workers compensation. He mentioned that in 1992 the federal court said that FELA was designed to provide injured railroad workers with as many options as possible when changing the venues in which they could file their complaint. He was just trying to give those options to the workers. He purported that nothing would change if this bill was passed, Union Pacific would continue to make its decisions on whether it could make money in Montana based on many things other than this bill. He mentioned the scare tactics and alarmist attitude being used by the opponents to the bill. He concluded that the bill had been drafted before the Supreme Court decision even came down. He asked the Committee to give a do pass to SB 375.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.3}

VICE CHAIR CROMLEY closed the hearing on SB 375. There was a five minute break at this time.

HEARING ON SB 378

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 378,** Allow prefiling request for insurance liability limits for torts.

SEN. WHEAT indicated that SB 378 would make it a lot easier for people to find out about the type of insurance that is available from the individual who caused the accident. The bill would allow the claimant to ask the responsible party about their

EXHIBIT NO. 1
Date 2-10-05
REC. SB 375

Statement of Alexander (Zander) Blewett, III, Re Proposed Amendment to Venue Statute Re FELA Claims § 25-2-122, MCA,

February 9, 2005

Federal law allows State Legislatures to enact venue laws applicable to FELA actions, and, at the present time, the Legislature has provided that in any tort action, the proper place of trial is the county in which any of the defendants reside or the county in which the tort was committed. If the defendant is a foreign corporation, the Legislature has decided that the tort claim can be brought in the county in which the tort was committed, the county in which the plaintiff resides, or the county in which the corporation's registered agent is located. This is a perfectly acceptable and fair venue provision for every conceivable tort claim, except an FELA claim.

An FELA claim arises out of negligence on the part of a railroad whereby a railroad worker suffers personal injury in the course and scope of his employment. The railroad is entitled to claim that the railroad worker was contributorily negligent and that his claim will be reduced by whatever percentage of negligence is found by a jury. The problem in an FELA case is that there is no workers' compensation benefits for any railroad worker injured on the job and that he must

file a negligence action against the employer railroad in one of the counties in our state.

The biggest problem arises with all of the railroad workers in Havre and in Glendive where the railroad virtually owns and controls these relatively small towns. Usually these railroad workers are going to be injured in Havre and since they live in Havre, the only place they could conceivably bring the case would be Havre or the county chosen by the railroad to have its registered agent. In an FELA action against BNSF in Havre, where the jurors would be faced with finding liability for damages against BNSF where BNSF controls the jurors' destiny and where BNSF is absolutely mandatory for the jurors' business interests and for the existence of their community, it would be entirely unfair to expect the railroad worker to bring such an action in Havre. Over the years, there have been an extremely limited number of FELA cases filed in Havre. The exact same circumstances exist in Glendive.

When these workers are injured in Havre or Glendive and live in Havre or Glendive, they are limited to <u>one</u> county in which they can file an FELA claim and that county is where the railroad has designated its registered agent. As a result, the railroad gets the opportunity to determine where it chooses to be sued in FELA cases and at the present time it has chosen Billings. BNSF could choose any other

county in the state besides Billings, and thereby force railroad workers to sue in any county designated by BNSF.

The proposed bill will rectify this problem and allow injured railroad workers to bring their action against a railroad in any county where the railroad does business in the state of Montana. The FELA stands for the Federal Employers Liability Act and is an act of Congress and allows FELA claims to be brought both in state court and in federal court. When the case is brought in federal court, the Congress, in its wisdom, allowed the injured railroad worker to bring the claim in any district where the defendant "shall be doing business at the time of commencing such action." This law is set forth in Title 45, U.S.C.S., § 56, and I have made a photocopy of this section for each of you committee members. You will note that I have highlighted in yellow the specific language where Congress has determined that the appropriate venue in an FELA case is any district where the railroad does business.

This is really quite a simple issue. When this statute was amended in 1995 to include the present language in 25-2-122, the Legislature inadvertently failed to address the differences between FELA actions and all other tort actions. If this bill is passed into law, it will allow injured railroad workers a reasonable choice of

venue, especially for the Havre workers and the Glendive workers who are presently restricted to filing the case in the county chosen by the railroad.

There has been some concern raised that a venue provision like this, which refers only to Montana residents and not out-of-state residents, would create an equal protection argument under our U.S. Constitution. This concern has been clearly removed by the Montana Supreme Court in *Ford v. BN* and the United States Supreme Court in *Ford v. BN*. Clearly, the state of Montana has a rational basis for making the distinction between Montana residents and out-of-state residents, to avoid the inundation of claims by out-of-state FELA workers under our "open court" system.

In the recent case of *Rule v. BNSF*, the Court, concluding that this Legislature has the right to enact venue laws applicable to FELA actions, stated:

> The Legislature did not create an exception from the provisions of §25-2-122(2) for FELA claims. Because § 25-2-122, MCA, does not expressly exclude FELA claims, we conclude the statute applies to FELA claims.

All we are asking by this bill is to set forth an appropriate FELA venue statute.

Thank you.

Alexander (Zander) Blewett, III

Purvis v Pennsylvania R. Co. (1950, DC Pa) 96 F Supp 698.

Question of validity of release executed by employee should be permitted to go to jury; withdrawal of this question from jury constitutes reversible error. Pacific E. R. Co. v Dewey (1949) 95 Cal App 2d 69, 212 P2d 255.

52. Summary judgment

Defendant was not entitled to summary judgment based on defense of accord and satisfaction where allegations of complaint set forth serious injuries sustained by plaintiff, and stated that consideration for release executed by plaintiff was $100 which claim agent said was wages. Kiloski v Pennsylvania R. Co. (1951, DC Del) 96 F Supp 321.

Issue as to material fact precluding summary judgment for railroad is raised by evidence that at time that plaintiff entered into settlement with railroad and signed release, which settlement almost exclusively represented plaintiff's wages for time lost from employment, neither plaintiff nor railroad claims agent contemplated that plaintiff had suffered permanent and disabling injury. Holmes v Missouri K. T. R. Co. (1978, Okla) 574 P2d 297.

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this act [45 USCS §§ 51 et seq.] unless commenced within three years from the day the cause of action accrued.

Under this act [45 USCS §§ 51 et seq.] an action may be brought in a circuit [district] court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this act [45 USCS §§ 51 et seq.] shall be concurrent with that of the courts of the several States.

(Apr. 22, 1908, ch 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch 143, § 1, 36 Stat. 291; Aug. 11, 1939, ch 685, § 2, 53 Stat. 1404; June 25, 1948, ch 646, § 18, 62 Stat. 989.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word, "district" is inserted on authority of Act Mar. 3, 1911, ch 231, §§ 289, 291, 36 Stat. 1167, which appears as 28 USCS §§ 430 and 430a which transferred the powers and duties of the circuit courts to the district courts.

Amendments:

1910. Act Apr. 5, 1910 added "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.".

1939. Act Aug. 11, 1939, substituted "three years" for "two years".

Exhibit 8
Date 2-10-05
SB 375

RAILROAD VENUE BILL

By Erik B. Thueson
213 Fifth Ave
Helena, Mt.

The proposed modification of the venue statute will not only carry out the Congressional aims of the Federal Employers Liability Act (FELA), but will also benefit hundreds of Montanans, who happen to be railroad workers.

A. THIS BILL CARRIES OUT THE PURPOSE OF THE FELA.

Railroad workers are not entitled to Workers Compensation benefits like other Montanans. Their only remedy for workplace injuries is under the FELA.[1]

This unique federal legislation requires workers to file a civil lawsuit. Compensation is only allowed if the railroad worker can show the employer negligently caused his or her injuries. The worker's damages can be reduced or eliminated by his own negligence (Thus, it differs from workers compensation laws, allowing benefits regardless of negligence.).

"The FELA was a response to the special needs of railroad workers who are daily exposed to the risks inherent in railroad work and are helpless to provide adequately for their own safety." [2] To carry out this "humanitarian" purpose,[3] the FELA is to be given a "liberal construction" in favor of the injured worker. [4]

In the way it wrote the FELA, Congress showed it wanted the worker to have a level playing field when it came to choosing the place of trial. The worker did not have to sue where the railroad would get the maximum benefit, such as a community where the company's wealth would allow it to influence the jury. Rather the worker was free to sue in any state or federal court where the railroad "shall be doing business"[5]

---

[1]45 U.S.C. 51 et. seq.

[2]Sinkler v. Missouri Pac. R. Co. 356 U.S. 326, 329, 78 S.Ct. 758, 762 (U.S. 1958)

[3]Urie v. Thompson 337 U.S. 163, 180-181, 69 S.Ct. 1018,1030 (U.S. 1949).

[4]Atchison, Topeka and Santa Fe Ry. Co. v. Buell 480 U.S. 557, 562, 107 S.Ct. 1410,1413 - 1414 (U.S.,1987)

[5] 45 U.S.C. § 56.

Thus, all Senate Bill 375 does is make Montana law identical in language to the FELA. Both will now allow the injured worker to file suit in any location where the railroad company is "doing business."

For close to a hundred years, Montana law was consistent with the FELA. Montanans were allowed to sue in any state court where the railroad was doing business. It was only a few years ago that BNSF was allowed to change the law so BNSF would be allowed to pick the community where suit would be brought. Thus, Senate Bill 375 merely brings the law back to where it was and again, makes it consistent with the FELA's humanitarian goals.

B. THE BILL PREVENTS BNSF FROM DISADVANTAGING MONTANANS.

Currently, the venue laws provide that BNSF can be sued where its agent for service of process is located. This allows for all types of mischief. BNSF can and has changed the location of its agent so as to disadvantage workers. Recently, it switched its agent from Helena to Billings, where its attorneys have their offices. How convenient.

There is nothing, of course, to stop BNSF from next moving its agent to a remote location like Circle, Montana, to make it even tougher on Montana railroad workers. In the alternative, it could move its agent to Havre or Glasgow, where it has enough presence and power to influence the jury.

C. CONCLUSION.

If this bill passes, hundreds of Montanans, who happen to work for a railroad, will benefit– as they should under the FELA and ordinary standards of fairness, given the difference between their resources and those of these companies. If it fails, only two out-of-state corporations will benefit: BNSF and UP.

All Montana railroad workers are requesting is a return to the level playing field that existed before. We suggest it should not be a close issue.

3
Date 2-10-05
SB 375

No. 04-145

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 6

LLOYD E. RULE,

Plaintiff and Appellant,

v.

BURLINGTON NORTHERN AND SANTA FE RAILWAY CO.,

Defendant and Respondent.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDV 2003-975
Honorable Julie Macek, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Alexander (Zander) Blewett, III, Kurt M. Jackson; Hoyt & Blewett, Great Falls, Montana

For Respondent:

Jon M. Moyers; Hedger Moyers, Billings, Montana

Submitted on Briefs: August 25, 2004

Decided: January 25, 2005

Filed:

Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court.

¶1 In this Federal Employers' Liability Act (FELA) action, the Eighth Judicial District Court, Cascade County, granted the motion of Burlington Northern and Santa Fe Railway Company (BNSF) for a change of venue. Lloyd E. Rule appeals. We affirm.

¶2 The issue is whether the District Court erred in granting BNSF's motion to change venue pursuant to §§ 25-2-122(2) and -201(1), MCA.

BACKGROUND

¶3 Rule filed this action in Cascade County District Court, seeking damages from BNSF for personal injury arising out of his railroad employment in Dawson County, where he resides. After Rule served BNSF through its registered agent in Yellowstone County, BNSF timely moved to change venue from Cascade County to either Yellowstone County or Dawson County, pursuant to §§ 25-2-122(2) and -201(1), MCA.

¶4 Relying on the referenced statutes, the District Court granted BNSF's motion to change venue and ordered the case transferred to either Dawson or Yellowstone County, at Rule's option. Rule appeals.

STANDARDS OF REVIEW

¶5 Proper venue is a question of law involving the application of venue statutes to pleaded facts. Our review of a district court's venue ruling is plenary; we simply determine whether the district court's ruling was legally correct. *Sprinkle v. Burton* (1996), 280 Mont. 358, 361, 935 P.2d 1094, 1096 (citations omitted).

¶6 Similarly, we review a conclusion that a statute is constitutional for correctness. *See Powell v. State Compensation Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, ¶ 13, 15 P.3d 877, ¶ 13 (citations omitted). The constitutionality of a legislative enactment is presumed, and the party challenging a statute bears the burden of proving it unconstitutional beyond a reasonable doubt. *Powell*, ¶ 13 (citations omitted).

DISCUSSION

¶7 Did the District Court err in granting BNSF's motion to change venue pursuant to §§ 25-2-122(2) and -201(1), MCA?

¶8 Venue issues relate to determining the proper place for trial of a legal action. The venue statutes at issue in the present case are § 25-2-122(2), MCA, and § 25-2-201(1), MCA. Subsections (a), (b) and (c), respectively, of § 25-2-122(2), MCA, provide that the proper place of trial for a tort action against a corporation incorporated in a state other than Montana is the county in which the tort was committed, the county in which the plaintiff resides or the county in which the corporation's resident agent is located. Section 25-2-201(1), MCA, provides that, upon motion and when the county designated in the complaint is not the proper county, a district court must change the place of trial.

¶9 In granting BNSF's motion, the District Court determined that venue was proper in either Dawson County or Yellowstone County. The apparent basis for that determination is that the alleged tort was committed--and Rule resided--in Dawson County, and BNSF's resident agent is located in Yellowstone County. The District Court implicitly concluded that, because Cascade County was not a proper venue under the plain meaning of § 25-2-

122(2), MCA, § 25-2-201(1), MCA, required it to change the place of trial to a proper county.

¶10 Rule sets forth three arguments in support of his overall contention that the District Court erred in applying the terms of Montana's general tort venue statutes to his FELA action: (1) that the Legislature did not intend § 25-2-122(2), MCA, to apply to FELA cases; (2) that § 25-2-122(2), MCA, cannot coexist with the liberal forum selection policy under FELA; and (3) that § 25-2-122(2), MCA, is unconstitutional because it constitutes an arbitrary and capricious limitation on FELA venue practice in Montana. We address each argument in turn.

¶11 Rule contends the Montana Legislature did not intend § 25-2-122(2), MCA, to apply to FELA cases. In this regard, he relies on Senator Bruce Crippen's comments during legislative hearings on the 1995 and the 1997 amendments to § 25-2-122, MCA. Specifically, he cites Crippen's remarks in response to criticism of the bill by railroad worker and union opponents. Crippen stated that "the provisions of this bill would not restrict their [FELA claimants'] options at all" and "[t]his has nothing to do with FELA. They can still file under the federal forum if they choose." *See* Hearing on Senate Bill 63 before the House Judiciary Committee, 1995 Montana Legislature, March 10, 1995, p. 2; Hearing on Senate Bill 314 before the Senate Judiciary Committee, 1997 Montana Legislature, February 13, 1997, p. 12.

¶12 Senator Crippen's comments at the referenced hearings appear to address the rights of FELA plaintiffs to sue in federal court. In any event, Senator Crippen's remarks do not

necessarily reflect the law. When a statute is plain and unambiguous on its face, we do not employ other means of interpretation in determining legislative intent. *See Connery v. Liberty Northwest Ins. Corp.* (1996), 280 Mont. 115, 119, 929 P.2d 222, 225 (citation omitted).

¶13 Pursuant to § 25-2-122(1), MCA, the general rule is that the proper place of trial for a tort action is the county in which the defendant resides or the tort was committed. Section 25-2-122(2), MCA, provides that the proper place of trial for a tort action in which the defendant is a corporation incorporated in a state other than Montana is the county in which the tort was committed, the county in which the plaintiff resides or the county in which the corporation's resident agent is located. Section 25-2-122(3), MCA, provides that if the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is the county in which the tort was committed or the plaintiff resides.

¶14 A FELA action is a negligence action against a common carrier by railroad under federal law. *See* 45 U.S.C. § 51. Negligence is a type of tort. Section 25-2-122(1), MCA, plainly states that--except as provided in subsections (2) and (3)--it applies to tort actions, and subsection (2) applies to tort actions against defendant corporations incorporated in a state other than Montana. BNSF is a defendant out-of-state corporation. The Legislature did not create an exception from the provisions of § 25-2-122(2), MCA, for FELA claims. Because § 25-2-122, MCA, does not expressly exclude FELA claims, we conclude the statute applies to FELA claims.

¶15 Next, Rule contends § 25-2-122(2), MCA, cannot coexist with "the liberal forum selection policy under the FELA to which injured railroad workers are entitled under Montana law." He advances both federal and state cases in support of this proposition.

¶16 There can be no dispute that both federal law and courts, and this Court, are protective of broad venue rights for FELA plaintiffs. Pursuant to federal statute, a federal district court has jurisdiction of a FELA action, concurrent with the jurisdiction of state courts, if the defendant resides in or does business in that federal court's district or if the cause of action arose in that district. *See* 45 U.S.C. § 56. Venue choices for FELA actions filed in federal court are broader than the choices allowed under the general federal venue provisions, which "worked injustices to employees." *Baltimore & O. R. Co. v. Kepner* (1941), 314 U.S. 44, 53, 62 S.Ct. 6, 10, 86 L.Ed. 28, 33. The United States Supreme Court has stated "[t]he right to select the forum granted in [45 U.S.C. § 56] is a substantial right." *Boyd v. Grand Trunk Western R. Co.* (1949), 338 U.S. 263, 266, 70 S.Ct. 26, 28, 94 L.Ed. 55, 58.

¶17 The Supreme Court also has recognized that "the venue of state court [FELA] suits was left to the practice of the forum . . . [provided,] [b]y virtue of the Constitution, [that] the courts of the several states must remain open to [FELA] litigants on the same basis that they are open to litigants with causes of action springing from a different source." *See Miles v. Illinois Cent. R. Co.* (1942), 315 U.S. 698, 703, 62 S.Ct. 827, 830, 86 L.Ed. 1129, 1134. Here, Rule does not dispute that the Montana venue statutes provide FELA litigants with access to Montana courts on the same basis as litigants with tort causes of action against nonresident corporations springing from different sources.

¶18 Rule relies on a series of Montana cases, decided over the last quarter-century, for the proposition that this Court does not recognize the doctrine of *forum non conveniens* in FELA actions. *See State ex rel. Burlington Northern R. Co. v. District Court* (1995), 270 Mont. 146, 154, 891 P.2d 493, 498; *State ex rel. Burlington Northern R. Co. v. District Court* (1987), 229 Mont. 325, 329, 746 P.2d 1077, 1080; *Labella v. Burlington Northern, Inc.* (1979), 182 Mont. 202, 595 P.2d 1184. He is correct.

¶19 Whether a change of venue may be allowed on the basis of *forum non conveniens* differs, however, from the question presented here, which is whether Rule filed his FELA action in a proper venue, in the first instance, under the applicable venue statute. Venue must be changed if the county designated in the complaint is not a proper county. Section 25-2-201(1), MCA. *Forum non conveniens*, which is codified in Montana at § 25-2-201(2) and (3), MCA, allows a court to decline to exercise jurisdiction even when jurisdiction is authorized under the venue statutes, when an impartial trial cannot be had in the county designated in the complaint or the convenience of witnesses and the ends of justice would be promoted by the change. In the present case, the District Court did not grant BNSF's change of venue motion pursuant to the doctrine of *forum non conveniens*, but instead pursuant to § 25-2-201(1), MCA, on the basis that Cascade County was not a proper county for Rule's FELA action given the plain language of § 25-2-122(2), MCA.

¶20 Rule next quotes from several Montana cases involving issues other than *forum non conveniens*, in which we have made statements relating to venue in FELA cases. For example, we stated in *Ford v. Burlington Northern R. Co.* (1991), 250 Mont. 188, 193, 819

P.2d 169, 173, *aff'd sub nom. Burlington Northern R. Co. v. Ford* (1992), 504 U.S. 648 112 S.Ct. 2184, 119 L.Ed.2d 432, that FELA was "designed to provide injured railroad workers with as many options as possible when choosing the venue within which to file their complaint." Similarly, we stated in *Haug v. Burlington Northern R. Co.* (1989), 236 Mont. 368, 374, 770 P.2d 517, 520, that "the FELA is to be given a liberal construction in favor of injured railroad employees." While Rule is correct that, under our cases, a FELA plaintiff may not be afforded *fewer* venue options than general tort plaintiffs, a FELA plaintiff's options are not necessarily unlimited, under any case law he has cited.

¶21 Rule also quotes from *Davis v. United Pacific R. Co.* (1997), 282 Mont. 233, 245-46, 937 P.2d 27, 34, that "[o]ne area of FELA that this Court has liberally construed in order to further the objectives of FELA is a plaintiff's selection of forum in actions brought under the Act." This statement is as true today as it was in 1997. However, *Davis* must be placed in an appropriate context.

¶22 Prior to 1995, Montana's general venue statute allowed a plaintiff to sue any nonresident defendant, including an out-of-state corporation, in any county in the state. *See* § 25-2-118(2), MCA (1993). In 1995, the Montana Legislature adopted § 25-2-122(2), MCA (1995), which restricted venue for a plaintiff bringing a tort action against a nonresident corporate defendant to the county in which the tort was committed, the county in which the plaintiff resided or the county in which the corporation's resident agent was located. The general venue statute allowing actions against nonresident defendants to be brought in any

county remained in effect as to noncorporate nonresident defendants. *See* § 25-2-118(2), MCA (1995).

¶23 In *Davis*, we addressed the constitutionality of the manner in which these venue statutes differentiated between cases in which the defendant was a nonresident corporation and cases in which the defendant was a nonresident individual. We reviewed the statutes in light of their practical application to an example of two motorists injured on a Montana highway, one as a result of the negligence of an out-of-state individual and the other as the result of the negligence of an out-of-state corporation. Based on the vastly different venue options available to the two plaintiffs in our example, we held that § 25-2-122(2), MCA, violated the Equal Protection Clause of the Montana Constitution. *Davis*, 282 Mont. at 246, 937 P.2d at 34.

¶24 Following our decision in *Davis*, the 1997 Legislature again amended the venue statutes, excepting from the general venue statutes all torts in which the defendant is a nonresident. Under the 1997 venue statutes, which remain in effect, the proper place of trial for a tort action against a nonresident defendant--corporate or otherwise--is the county in which the tort was committed, the county in which the plaintiff resides or, in the case of a corporate defendant, the county in which the corporation's resident agent is located. *See* §§ 25-2-118(2) and 25-2-122(2) and (3), MCA.

¶25 We have reviewed all of the authorities cited by Rule in support of his second contention. It is true that we have always supported broad FELA venue choices. However, we have never required, nor do the federal statutes or case law, that state court venue for

FELA actions must include every place the defendant railroad does business, regardless of venue limits statutorily placed on other tort plaintiffs. We observe that, under § 25-2-122(2), MCA, FELA plaintiffs have three proper venues for trial, as opposed to two venues available to plaintiffs under the general tort statute or in a tort case in which the defendant is an out-of-state individual. We conclude § 25-2-122(2), MCA, provides sufficient venue options for FELA plaintiffs to meet the concerns expressed in the federal venue statute and cases and our previous cases.

¶26 Rule's third argument is that § 25-2-122(2), MCA, constitutes an arbitrary and capricious limitation on FELA venue practice in Montana and violates his right to substantive due process of law. We disagree with Rule's notion that § 25-2-122(2), MCA, is arbitrary and capricious *vis-a-vis* FELA venue practice. Under the statute, a FELA plaintiff has the same, or greater, venue rights as any other tort plaintiff.

¶27 Rule claims venue in FELA cases is elevated to a substantive right and § 25-2-122(2), MCA, is unconstitutional. He properly advances *Hardy v. Progressive Specialty Ins. Co.*, 2003 MT 85, 315 Mont. 107, 67 P.3d 892, for the proposition that, in order to comply with substantive due process requirements of the Montana Constitution, a statute must be reasonably related to a permissible legislative objective. Rule contends prevention of forum shopping in FELA cases is not a permissible statutory objective. The statute does not treat FELA plaintiffs differently than other plaintiffs with tort actions, however, and Rule presents no evidence that restricting forum shopping by a FELA plaintiff was the purpose of § 25-2-122(2), MCA.

¶28 The Montana Legislature has broad discretionary powers to enact laws governing venue. *See Davis*, 282 Mont. at 242, 937 P.2d at 32. As a matter of federal law, FELA cases filed in state courts are subject to the same venue provisions as other civil cases filed in state courts. *Miles*, 315 U.S. at 703, 62 S.Ct. at 830, 86 L.Ed. at 1134. Because federal law allows state legislatures to enact venue laws applicable to FELA actions, there is no legal impediment to treating FELA plaintiffs exactly the same as other Montana plaintiffs with tort actions against out-of-state corporate defendants.

¶29 Under § 25-2-122(2), MCA, the state courts of Montana remain open to FELA plaintiffs on the same basis that they are open to tort litigants with causes of action springing from a different source. Rule has established no reason why application of § 25-2-122(2), MCA, to FELA cases exceeds legislative discretion in enacting venue statutes. As a result, we conclude Rule has not met his burden of proving § 25-2-122(2), MCA, unconstitutional.

¶30 We hold the District Court properly applied the venue statutes, which Rule has not proven unconstitutional. We affirm the District Court's order granting BNSF's motion for change of venue.

/S/ KARLA M. GRAY

We concur:

/S/ JAMES C. NELSON
/S/ PATRICIA O. COTTER
/S/ JOHN WARNER
/S/ JIM RICE

Montana State Legislature

Exhibit Number: 4

This exhibit is a pamphlet; a portion of this exhibit has been scanned for your research. The original exhibit is on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

PORT OF MONTANA

Gateway to Your Destination

Exhibit 5
Date 2-10-05
SB 375

Before the Montana Senate Judiciary Committee

February 10, 2005

Testimony of Ed Bartlett

On behalf of Union Pacific Railroad

In Opposition to

SB 375

Mr. Chair and Members of the Committee: My name is Ed Bartlett. I am an attorney representing the Union Pacific Railroad. The Union Pacific Railroad opposes Senate Bill 375 and respectfully asks that you also oppose SB 375.

The proper place of trial is fairly and equitably set forth in the current law under Section 25-2-122 (1), (2) and (3). To target railroads as defendants in Montana courts differently than any other defendant is not necessary or required under the Federal Employers' Liability Act. To do so would be unfair and unjust. Further, why should railroad employees be treated differently than other Montana plaintiffs in selecting the proper place of trial?

The Montana Supreme Court ruled on January 25, 2005, in the case of Lloyd Rule vs. Burlington Northern and Santa Fe Railway Co. that the existing Montana venue law is applicable to FELA cases, concluding that Section 25-2-122 (2) provides sufficient venue options for FELA plaintiffs to meet the concerns expressed in the federal venue statute and cases and our previous cases. The MT Supreme Court said that under the statute, a FELA plaintiff has the same, or greater, venue rights as any other tort plaintiff. The Court stated that FELA plaintiffs suing railroad employers may be treated the same as any other Montana plaintiffs with tort actions against out-of-state corporate defendants.

Under Section 25-2-122(2), FELA plaintiffs and any other plaintiffs have three proper venue choices for trial: 1) the county in which the tort was committed; 2) the county in which the plaintiff resides; or 3) the county in which the corporation's resident agent is located (in other words, where the defendant corporation lives). Isn't that fair and isn't that enough?

Governor Schweitzer in his State of the State address said that Montana is open for business. To enact SB 375 would have the likely result of increasing the costs railroads incur doing business in Montana which in turn will result in increased shipping rates to Montana customers or decreased service or both. I don't think that is what the Governor had in mind.

The Union Pacific, the other Class I railroad in Montana, operates over 33,000 route miles in 23 states. Only 125 of those route miles are in Montana, but those miles allow Montana access to markets and products access to Montana. For example, General Motors cars delivered by Union Pacific to the Port of Montana in Butte are distributed for sale throughout Montana.

Montana needs to protect and maintain the business and the businesses it has as well as expand that business. That cannot be done, if the Legislature enacts laws like SB 375 that increase the cost and risk of doing business in Montana.

Butte Local
Development
Corporation

EXHIBIT 6
DATE 2-10-05
SB 375

February 9, 2005

Montana Senate Judiciary Committee

Dear Chairman Wheat and Members of the Judiciary Committee:

On behalf of the Butte Local Development Corporation, I submit this letter in opposition to Senate Bill 375. We feel the current laws in effect give employees and employers covered under the Federal Employers Liability Act equal and just coverage. Expanding the scope of where a trial could take place under this act does not effectively improve the intent of the Federal Employers Liability Act itself.

Legislation and laws should be written so that all affected are treated fairly. The current law covering the place of trial for a tort action subject to the Federal Employers Liability Act is just and fair. Expanding the scope of where trials can take place removes the balanced approach and subjects the employers to employees seeking trials in locations with a known bias against employers. This bias could potentially result in extraordinarily large settlements against the employers. These settlements although paid by the employer are actually passed on to all those using the railroads through higher transportation rates.

One of Montana biggest detriments is its proximity to major markets. The crops we grow and products we produce must be shipped by truck or rail great distances. Many locations throughout our state are served by just one railroad. We in Montana have for a long time insisted that we have competitive shipping rates. Passing legislation that has the potential to raise the cost of doing business in our state and thus having increased pressure to boost shipping rates is defeating our own purpose.

The current law does not limit the employee's ability to be justly compensated for an action against their employer. This right should be maintained. However, increasing the scope to where the trial could be take place is not just and fair to the employer. We ask that Chairman Wheat reconsider his sponsorship of this bill and that the committee members vote against Senate Bill 375.

305 W. Mercury - PO Box 507 - Butte, Montana 59703
(406) 723-4349 - fax (406) 723-4672 - email: bldc@bldc.net
www.buttemontana.org - www.silkonmountain.org - www.cybervillagebutte.com

Thanks you for your consideration on this matter

Sincerely,

Jim Smitham
Interim Executive Director

Date 2-10-05
SB 378

The 2004 Florida Statutes

Title XXXVII
INSURANCE

Chapter 627
INSURANCE RATES AND CONTRACTS

627.4137 Disclosure of certain information required.--

(1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:

(a) The name of the insurer.

(b) The name of each insured.

(c) The limits of the liability coverage.

(d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.

(e) A copy of the policy.

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

History.--ss. 543, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 22, ch. 83-288; ss. 38, 114, ch. 92-318; s. 327, ch. 97-102.

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 2-10-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE			
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

DATE February 10, 2005

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 374, SB 375, SB 378

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Randy Cox	543-6646	Montana Rail Link	375		X
Fran Marceau	7556336	UTU	375	X	
Craig Gilchrist	228-9810	BLET	375	X	
Jacqueline Lenmark	2-0230	Am. Ins. Assn.	375		X
"	"	"	378		X
Zander Blewett	761-1960	Self	375	X	
Erik Thuesen	447-8200	Self	375	X	
Leo Berry	443-6850	BWSA	375		X
Al Smith	443-3124	MTLA	375 378	X X	
Bill Penn	723-4061	Butte Silver Bow	375		X
Earl Bell	593-2018	Bu. H. Silver Bow Gov	375		X
George L Pauly	723-4321	Port of Montana	375		X
Bill Tash		5036	375		X
Jerry Driscoll	860-8650	AFL-CIO	378	X	
Larry Kyle	360-706-6929	PCI	378		X
Dan Carr	240-5010	Farmers Ins	378		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON SB 375

BILLS BEING HEARD TODAY: _____

_____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Ed BARTHETT	443-6820	UNION PACIFIC	SB 375		X
Don Judge	459-1708	Teamsters Local 190	SB 375	X	
Roger McGlenn	442-9555	~~IDAM~~	378		X
DARRELL HOLZER	439-1707	MT. AFL-CIO	375	X	
Mike Halligan	378-6551	WASH CORP	375		X
Richard Owen	761-4596	MT Grain Growers	375		X
John Youngberg	570-4103	MFBF	375		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 14, 2005 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 387, 2/9/2005; SB 385, 2/9/2005; SB 402, 2/9/2005
Executive Action: SB 146; SB 43; SB 319; SB 344; SB 374; SB 375

office with a salary that will fluctuate. She did not believe that if a person runs for the office and accepts it that way that it could be legally challenged. She added that if it is challenged and taken to the Supreme Court, guess who is going to be ruling on the constitutionality of it?

SEN. O'NEIL said his concern is that Article VII(2) of the Constitution states that the Supreme Court shall make rules of procedure for the Court not the Legislature. **Ms. Lane** said that the fundamental issues are the question of separation of powers between the two bodies of government and whether or not SB 374 would be found constitutional. Looking at statutes from other states and the discussions of the Constitutional Convention notes, there would be good arguments that SB 374 could be found constitutional, but she could not guarantee it.

Vote: SEN. CROMLEY'S motion that SB 374 DO PASS carried on an 8 to 4 voice vote. SENATORS O'NEIL, MCGEE, PERRY, and CURTISS voted nay. SEN. MANGAN voted aye by proxy.

EXECUTIVE ACTION ON SB 375

{Tape: 3; Side: B; Approx. Time Counter: 21.2 - 25.8}

Motion: SEN. SHOCKLEY moved that SB 375 (change venue in FELA cases) DO PASS.

Discussion: SEN. SHOCKLEY said that during the hearing on SB 375, the MT Trial Lawyers Association's (MTLA) position was that the railroad companies have too much influence on the jury pool. Then the graingrowers, who hate the railroads, testified for the railroads. In addition to that, people from Butte testified that they will cut back service if the Legislature does not pass SB 375. He then thought of the most egregious criminal statute--the special provision related to railroads ($500 worth of damage is worth five years at MSP with no probation or parole). He felt that SB 375 had merit, and he was going to support it.

SEN. MCGEE opposed SB 375 because the bill was about political power. In 1995 and 1997, when the Republicans were in control, the language to allow for venue changes was changed to restricted. Now that the political power has changed, it gives the opportunity to change the language to another way. He did not believe that venue shopping was legitimate and did believe that current law is fair for both the plaintiff and defendant.

SEN. PERRY also opposed SB 375 because the state has adequate laws to provide for proper venue for those who feel that they

cannot get an impartial trial. The laws apply to every worker in Montana, therefore, SB 375 is a bad bill.

Vote: SEN. SHOCKLEY'S motion that SB 375 DO PASS carried on an 8 to 4 roll call vote. SENATORS O'NEIL, MCGEE, PERRY, and CURTISS voted nay.

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 2-14-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 375** (first reading copy -- white) **do pass**.

Signed: *Senator Mike Wheat, Chair*

- END -

Committee Vote:
Yes 8, No 4.

361254SC.ssc

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 2-14-05 BILL NO. SB 375 NUMBER 1

MOTION: do pass

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)		X
	8	4

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on March 15, 2005 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Jim Keane, Chairman (D)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Scott Mendenhall (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Wayne Stahl (R)
Rep. Dan Villa (D)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 105, 3/10/2005; HB 135, 3/10/2005; SB 326, 3/10/2005; SB 375, 3/10/2005; SB 411, 3/10/2005
Executive Action: SB 105, SB 135, SB 326, SB 209

HEARING ON SB 326

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 326,** Revise law on excavation near underground utility facility.
00:03:19

Proponents' Testimony:
00:08:35 Bud Criner, Montana Dakota Utility Program
00:13:08 John Fitzpatrick, Northwestern Energy
00:17:45 Rick Hays, Qwest
00:18:39 Phil Maxwell, Three Rivers Communications
00:19:41 Jerry Driscoll, AFL-CIO

Opponents' Testimony:
00:19:55 Ron Ostberg, Independent Telecommunications Systems

Informational Testimony: None

Questions from Committee Members and Responses:
00:23:32

Closing by Sponsor:
00:32:18

HEARING ON SB 375

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 375,** Revise venue of out-of-state railroad defendants.
00:36:29

Proponents' Testimony:
00:42:36 Zander Blewett, Great Falls
EXHIBIT(buh57a01)
00:49:21 Fran Marceau, United Transportation Union
00:51:18 Craig Gilchrist, International Brotherhood of Teamsters

00:53:23 James Mular, Transportation and Communications Union
00:56:28 Keith Allen, Brotherhood of Electrical Workers
00:56:45 Jerry Driscoll, AFL-CIO
00:57:17 Al Smith, Montana Trial Lawyers Association
EXHIBIT(buh57a02)
00:57:44 Dave Paoli, from Missoula
00:57:58 James Shea, Railroaders

Opponents' Testimony:
00:58:24 Jeff Hedger, Burlington Northern Sante Fe
01:08:30 Matt Hayhurst, Montana Rail Link
EXHIBIT(buh57a03)
01:12:51 Bill Penn, Economic Development Director, Butte
01:13:42 George Paul, Port of Montana
01:14:10 Ed Bartlett, Union Pacific Railroad
EXHIBIT(buh57a04)
01:14:50 Webb Brown, Montana Chamber of Commerce

Informational Testimony: None

Questions from Committee Members and Responses:
01:15:23

Closing by Sponsor:
01:43:57

HEARING ON SB 105

Opening Statement by Sponsor:

SEN. JOHN COBB (R), SD 9, opened the hearing on **SB 105**, Expand health care providers available at ringside.
01:59:36

Proponents' Testimony:
02:05:25 Erin McGowan-Findram, State Auditors Office
02:09:33 Frank Cote, Blue Cross and Blue Shield
02:11:44 Don Allen,

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
02:15:42

Closing by Sponsor:
02:16:55

EXHIBIT 2
DATE 3-15-05
SB 375

SB 375

Fair For Railroad Workers

SB 375 provides that:
"(4) If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the Federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business."

SB 375 amends the venue (where a lawsuit should be filed) laws for claims against railroads to be the same as is provided for under FELA [Federal Employers' Liability Act].

FELA allows a lawsuit against a railroad to be brought in any county where the railroad does business - SB 375 does the same.

The Montana Supreme Court has recently ruled that it is within the legislature's power to enact venue laws - SB 375 does just that.

SB 375 returns fairness to the injured railroad worker.

SB 375 is necessary to allow injured railroad workers an opportunity to have their cases heard in counties where the railroad is not one of the most powerful employers in the community.

SB 375 applies only to injured railroad workers who are Montana residents.

Current law allows a FELA case to only be filed where the person was injured, where the person resides or where the railroad has its registered agent - all places where the railroad has an unfair advantage as one of the most powerful employers in the community.

SB 375 DOES NOT change anything for Union Pacific - they do business in Beaverhead and Silver Bow counties. Nothing changes for UP, they can be sued right now in those same counties under current law, and they can be sued there under SB 375.

Support fairness for railroad workers vote yes for SB 375.

Al Smith, Montana Trial lawyers, 439-3124

EXHIBIT 3
DATE 3.15.05
SB 375

HOUSE BUSINESS & LABOR COMMITTEE
SB 375 - VENUE IN FELA CASES
MARCH 15, 2005

FLAWS IN SB 375

- **Montana Rail Link Is Being Singled Out**

  → MRL will be treated differently than any other Montana corporation

- **No Reason for Change**

  → Montana Supreme Court recently held that existing venue rules are constitutional

  → "There is no legal impediment to treating FELA plaintiffs exactly the same as other Montana plaintiffs with tort actions . . . ." *Rule v. BNSF*, 2005 MT 6.

- **FELA Plaintiffs Already Have More Venue Options than Other Plaintiffs**

  → *Four Venue Choices for Plaintiff in FELA Case Against MRL*

  1. Place of accident
  2. MRL's principal place of business
  3. Federal court division where accident occurred
  4. Federal court division of MRL's principal place of business

  → *Two Venue Choices for Regular Plaintiff in Case against Montana Corporation*

  1. Place of accident
  2. Corporation's principal place of business

- **Procedure Already Exists if Plaintiff Cannot Get Fair Trial**

  → "The court or judge must ... change the place of trial ... when there is reason to believe that an impartial trial cannot be had" in that county. *MCA § 25-2-201*

- **Proposed Venue Rule Is Unconstitutional – Violates "Equal Protection"**

  → Montana FELA plaintiffs treated differently than out-of-state FELA plaintiffs

  → MRL treated differently than every other Montana corporation in the entire state

Matt Hayhurst, Boone Karlberg P.C.
On Behalf of Montana Rail Link, Inc.

EXHIBIT 4
DATE 3.15.05
SB 375

Before the Montana House Business and Labor Committee

March 15, 2005

Testimony of Ed Bartlett

On behalf of Union Pacific Railroad

In Opposition to

SB 375

Mr. Chair and Members of the Committee: My name is Ed Bartlett. I am an attorney representing the Union Pacific Railroad. The Union Pacific Railroad opposes Senate Bill 375 and respectfully asks that you also oppose SB 375.

The proper place of trial is already fairly and equitably set forth in the current law under Section 25-2-122 (1), (2) and (3) MCA. To target railroads as defendants in Montana courts differently than any other defendant is not necessary and is not required under the Federal Employers' Liability Act (FELA). To do so would be unfair and unjust. Further, plaintiffs who are railroad employees should not be treated differently than any other Montana plaintiffs when the Legislature grants those plaintiffs choices for the location of their trials.

The Montana Supreme Court has recently decided an important case which gives you, the Legislature, all the guidance you need to conclude that SB 375 is not needed and is not appropriate. The Montana Supreme Court ruled on January 25, 2005, in the case of Lloyd Rule vs. Burlington Northern and Santa Fe Railway Co. that the existing Montana venue law is applicable to FELA cases, concluding that Section 25-2-122 (2) MCA provides sufficient venue options for FELA plaintiffs to meet the concerns expressed in the federal venue statute and cases and in previous Montana cases. The Montana Supreme Court said that under the current statute, a FELA plaintiff has the same, or greater, venue rights as any other tort plaintiff. The Court stated that FELA plaintiffs suing railroad employers may be treated the same as any other Montana plaintiffs with tort actions against out-of-state corporate defendants.

Under Section 25-2-122(2) MCA, FELA plaintiffs and any other plaintiffs have three proper venue choices for trial: 1) the county in which the tort was committed; 2) the county in which the plaintiff resides; or 3) the county in which the corporation's resident agent is located (in other words, where the defendant corporation resides in the State). FELA plaintiffs also may elect to file their claim in Federal Court. Isn't that fair and isn't that enough? Of course it is—plaintiffs who are railroad employees should not be treated differently than any other plaintiff; nor does the law require that they be treated differently.

Governor Schweitzer in his State of the State address said that Montana is open for business. To enact SB 375 would have the likely result of increasing the costs railroads incur doing business in Montana which in turn will result in increased shipping rates to Montana customers or decreased service or both. I don't think that is what the Governor had in mind.

The Union Pacific, the other Class I railroad in Montana, operates over 33,000 route miles in 23 states. Only 125 of those route miles are in Montana, but those miles provide Montana products access to markets outside Montana; and provide products from outside Montana access to Montana customers. For example, a significant quantity of Montana grain, originating from many Montana counties, is hauled by truck to Butte and then shipped from Butte on Union Pacific Railroad, providing competition to BNSF; and General Motors cars delivered by Union Pacific to the Port of Montana in Butte are distributed for sale throughout Montana.

The State of Montana needs to protect and maintain the business and the businesses it has and needs to support expansion of that business. This cannot be done if the Legislature enacts laws like SB 375 that increase the cost and risk of doing business in Montana.

The Union Pacific Railroad respectfully requests that you oppose SB 375.

SENATE BILL NO. 375

INTRODUCED BY M. WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~If~~ Except as provided in subsection (4), if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~If~~ Except as provided in subsection (4), if the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides. on the date of injury

(4) If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business."

defina

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3.15.05

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR	✓		
REP. JOE McKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT	✓		
REP. LLEW JONES	✓		
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		

VISITORS REGISTER

Montana

House of Representatives

Business & Labor Committee

Bill Number: SB 375 Date: 3/15/05

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational
MATT HAYHURST	MONTANA RAIL LINK		X	
Jeff Hedger	BNSF		X	
~~Bob Brown~~	~~UTU~~	~~X~~		
Zander Blewett	Self	X		
Bill Penn	Butte Silver Bow		X	
CRAIG GILCHRIST	BLEST	X		
JAMES T. MULAR	TCU BUTTE	X		
Al Smith	MTLA	X		
Leah Allen	IBEW	X		
Fran Marceau	UTU	X		
Jerry Driscoll	AFL-CIO	X		
David Pabst	Self	X		
Jim [illegible]	Self	X		
George O'Neil	Port of Montana		X	
Ed Bartlett	Union Pacific		X	

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on March 21, 2005 at 9:30 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Jim Keane, Chairman (D)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Scott Mendenhall (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Wayne Stahl (R)
Rep. Dan Villa (D)
Rep. Jonathan Windy Boy (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: SB 383, 3/16/2005; SB 412, 3/16/2005; SB 451, 3/16/2005
Executive Action: SB 451, SB 375

HEARING ON SB 451

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 451**, Revise speech-language and audiologists licensing laws.
00:02:34

Proponents' Testimony:
00:05:24 Darrell Micken, Audiologist from Bozeman
00:08:48 Laura Jo McKamey, Speech and Hearing Association
00:10:48 Nanette Smith, Speech and Hearing Association
00:11:28 Gloria Hermanson, Society of Ear, Nose and Throat

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:13:02

Closing by Sponsor:
00:21:25

HEARING ON SB 383

Opening Statement by Sponsor:

SEN. VICKI COCCHIARELLA (D), SD 47, opened the hearing on **SB 383**, Stipend for speech-language pathologist teachers.
00:22:36

Proponents' Testimony:
00:25:57 Janice Nugent, Speech and Language Therapist
00:28:41 Laura McKamey, Speech and Hearing Association
EXHIBIT(buh62a01)
00:30:42 Elaine Spino, Speech Language Therapist
00:32:01 Eric Burke, MEA-MFT
00:33:41 Jim Smith, Speech Language and Hearing Association

Opponents' Testimony: None

EXECUTIVE ACTION ON SB 375

Motion: REP. GALVIN-HALCRO moved that SB 375 BE CONCURRED IN.

Discussion:
01:56:04

Motion: REP. MCKENNEY moved that SB 375 BE AMENDED.

Discussion:
01:58:15
EXHIBIT(buh62a03)

Vote: Motion failed 9-9 by roll call vote with REP. ARNTZEN, REP. HEINERT, REP. JONES, REP. KLOCK, REP. MCKENNEY, REP. MENDENHALL, REP. MILBURN, REP. ROBERTS, and REP. STAHL voting aye.

Vote: The Motion that SB 375 BE CONCURRED IN carried 11-7 by roll call vote with REP. HEINERT, REP. JONES, REP. KLOCK, REP. MCKENNEY, REP. MENDENHALL, REP. MILBURN, and REP. ROBERTS voting no. REP. BERGREN to carry. (Rep. Stahl wanted it put in the record that this applied only to Montana Residents.)

EXHIBIT 3
DATE 3.21.05
SB 375

Amendments to Senate Bill No. 375
3rd Reading Copy

Requested by Representative Joe McKenney

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 15, 2005 (2:43pm)

1. Page 1, line 26.
Following: "resident"
Insert: "on the date of the injury"

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3.21.05

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR	✓		
REP. JOE McKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT	✓		
REP. LLEW JONES	✓		
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 375** (third reading copy -- blue) **be concurred in**.

Signed: _____
Representative Jim Keane, Chair

To be carried by Representative Bob Bergren

- END -

Committee Vote:
Yes 11, No 7.

621214SC.hkh
3/21/05
jbm

HOUSE OF REPRESENTATIVES

Roll Call Vote

BUSINESS AND LABOR COMMITTEE

DATE 3.21.05 BILL NO SB 375 MOTION NO. _____

MOTION: BE Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR		✓	
REP. JOE McKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN		✓	
REP. TIM DOWELL		✓	
REP. KEVIN FUREY		✓	
REP. DAVE GALLIK		✓	
REP. RALPH HEINERT	✓		
REP. LLEW JONES	✓		
REP. MIKE JOPEK		✓	
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA		✓	
REP. JONATHAN WINDY BOY		✓	
REP. JIM KEANE, CHAIR		✓	
	9	9	

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 3-21-05 BILL NO SB 375 MOTION NO. _____
MOTION: _____
BE Concurred IN

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR	✓		
REP. JOE McKENNEY, VICE CHAIR		✓	
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT		✓	
REP. LLEW JONES		✓	
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK		✓	
REP. SCOTT MENDENHALL		✓	
REP. MIKE MILBURN		✓	
REP. DON ROBERTS		✓	
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		
REP. JIM KEANE, CHAIR	✓		
	11	7	

s:/Bus&LaborRollCallVote2005

Bergren

2005 Montana Legislature

About Bill -- Links

SENATE BILL NO. 375
INTRODUCED BY WHEAT

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~If~~ Except as provided in subsection (4), if the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~If~~ Except as provided in subsection (4), if the defendant is a resident of a state other than Montana, the

proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to causes of action occurring on or after [the effective date of this act].

- END -

Latest Version of SB 375 *(SB0375.ENR)*

Processed for the Web on April 2, 2005 (11:30am)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

Status of this Bill | 2005 Legislature | Leg. Branch Home

This bill in WP 5.1 | All versions of all bills (WP 5.1 format)

Authorized print version w/line numbers (PDF format)

[NEW SEARCH]

Prepared by Montana Legislative Services

(406) 444-3064